Similarly, in the event of the deceased's dying intestate, such damages also do form part of the assets of the estate in which creditors and any of the next-of-kin of the deceased, whether dependants or not, may be interested. The fact that the dependants may succeed to such damages is therefore purely fortuitous.

This is in striking contrast to damages for loss of support under section 7 of the Civil Law Act, 1956, which go directly to a specially defined class of dependants of the deceased and form no part of his estate. In the event, therefore, of the deceased's estate proving to be insolvent, such damages would not go to his trustee in bankruptcy.

I cannot therefore equate an award for damages for loss of expectation of life made pursuant to the provisions of section 8 of the Civil Law Act, 1956, with "dependants' benefit" within the meaning of section 15(1) (c) of the Act. I fail to see any connection or nexus between the two to satisfy me that they are similar in character. The fact that the damages awarded under this head may eventually go to the dependants is, as I have said, purely fortuitous and beside the point. What is material is not so much the destination of these damages as their character.

It is my opinion, therefore, that an award of damages in respect of such a claim is not a similar benefit within the meaning of section 42 of the Act.

Accordingly, the bar imposed by section 42 of the Act is not available to the defendants herein insofar as the claim for loss of expectation of life under section 8 of the Civil Law Act, 1956, is concerned.

I would therefore answer question (b) in the negative.

In these circumstances, the action would ordinarily proceed on its merits only as regards the claim under section 8 of the Civil Law Act, 1956. However, I was informed by counsel that should either or both the above questions be resolved in favour of the plaintiffs, then, liability for negligence and the quantum of damages would be admitted. That being the case, all that remains for me to do will be to enter judgment for the plaintiffs in the sums agreed and for costs.

Order accordingly.

Solicitors: *Karpal Singh & Co.; Lim Kean Siew & Co.*

H. H. BHATT v. M. KALYANASUNDRAM & ANOR.

[O.C.J. (Mohamed Dzaiddin J.) September 4, 1984; July 4, 1985; April 2, 3 & 22, 1986]

[Penang – Suit No. 106 of 1983]

Landlord and Tenant – Rent control – Whether premises within the Control of Rent Act – Test applied – Control of Rent Act, 1966 (Cap. 266), s. 4(2)(a).

The premises in question were originally built sometime in the early part of the century. The building was bombed during World War II. The bombing, however, did not hit the building directly but destroyed its back portion and the roof. The plaintiff contended the said premises were a controlled premises because the building was completed before January 31, 1948, although subsequently it was repaired and renovated as a result of damage due to the bombing during World War II. The defendant, on the other hand, said that it became new premises after it was rebuilt after January 31, 1948. It is therefore free from the operation of the Act.

Held: (1) the test to be applied is simply the degree of change affected by the additions and alterations to the existing structure;

(2) in this case the premises were controlled premises within the meaning of the Control of Rent Act, 1966 because the changes which had taken place in the premises were not of a substantial character as to affect the general structure of the said premises.

Cases referred to:

(1) *Krishna Sreedhara Panicka* v. *Chiam Soh Yong Realty Co. Ltd.* [1983] 1 M.L.J. 65.
(2) *Kai Nam* v. *Ma Kam Chan* [1956] A.C. 358, 368.
(3) *Yong Chiang* v. *Bong Tjhin Oi* [1973] 2 M.L.J. 136.

CIVIL SUIT.

R. K. Sharma for the plaintiff.

N. Shanmugam for the defendants.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: The sole question for my determination in this case is whether or not premises No. 40 Green Hall, Penang ("the said premises") were controlled premises within the meaning of the Control of Rent Act 1966. Section 4(2)(a) of the Act states as follows:

"(2) The following premises shall be free from the operation of any of the provisions of this Act, namely –
(a) buildings completed after 31st day of January 1948;"

The plaintiff contended the said premises are controlled premises because the building was

completed before January 31, 1948, although subsequently it was repaired and renovated as a result of damage due to the bombings during the World War II. The defendant, on the other hand, said that it became a new premises after it was rebuilt after January 31, 1948. It is therefore free from the operation of the Act.

Law

From several authorities it is clear that the test to be applied is simply the degree of change affected by the additions and alterations to the existing structure (*Krishna Sreedhara Panicka* v. *Chiam Soh Yong Realty Co. Ltd.*[1]). However, where an altogether different building had arisen out of the ashes of the old, even though the building was built on the same foundation and had the same ground floor the test applied was:

". . . . where the damage has been so extensive that repair is impossible, when there is nothing left which could possibly be called a building, then surely the existence of that building as such is terminated and that a building replacing it would be an entirely new building even though it was built on the same foundations and had the same floor as the old one."

[per Lord Cohen in *Kai Nam* v. *Ma Kam Chan.*[2] followed in *Yong Chiang* v. *Bong Tjhin Oi*[3]].

Facts:

From the evidence, the following facts emerged:

1) The said premises were originally built sometime in the early part of the century. It is a double-storey building situated on an intermediate lot in a row of shophouses along Green Hall. According to Purushottam (P.W.1) a retired businessman, sometime in January 1948 he visted the said premises with his boss, Mr. A.C. Patel who was interested to purchase the said premises. The building was bombed during World War II. The bombing, however, did not hit the building directly, but destroyed its back portion and the roof. When the war was over and until 1948 no one had occupied the said premises. When he entered the said premises he saw the roof had fallen and there was debris lying on both the ground and the first floors. He also noticed the back portion of the said premises were in a terrible condition. But the front part was in good condition. There was staircase leading to the first floor with wooden steps.

Under cross-examination, P.W.1 stated that the tiles in the said premises remained the same. So also the cupboard and the windows. The walls and the front door remained intact and was not affected by the bombing. However, the back portion had been repaired. He could not say whether other parts of the said premises had also been repaired.

2) Because of the war damage, the defendant's predecessor in title sometime in 1948 submitted two plans No. 6327 and 6375 to the then City Council for its approval to make alterations and additions to the said premises. According to Mr. Lee Quee Hye, (D.W.1), the M.P.P.P. Building Inspector, from the plans he was able to say that the alterations which the landlord required for approval were mostly at the rear portion of the ground floor of the said premises *i.e.* the kitchen, bathroom/toilet. There were also alterations required on the terrace and part of the said terrace would be a new construction. The plan also showed an alteration to the middle portion of the said premises at the airwell. It showed a new wooden staircase near the airwell area from the ground floor leading to the first floor. Further, the plan also showed three beams were replaced by R.S.J. (rolls steel joist). The landlord submitted an amended plan No. 6375 which was duly approved on February 16, 1949. This was for an additional roofing over the first floor terrace at the rear of the building and he converted this open terrace into a kitchen and bathroom. A few minor alterations were also approved which included an additional toilet on the ground floor and repositioning of the kitchen range.

Under cross-examination D.W.1 admitted that he would not know if the alterations and renovations were carried out by the landlord although the City Council approved the plans on November 3, 1948. He had never visited the said premises.

3) En. Kamal bin Md. Din (P.W.3), a chartered architect, testified that on the instruction of plaintiff's counsel he inspected the building sometime in March 1986 and after making a study of the plans (exh.D2A-2D) approved by the then City Council and comparing them with the existing facilities which he saw at the said premises he prepared a report (exh.P15) commenting on the state of repairs, alterations and additions effected by the landlord. In his opinion, there were alterations done to the said premises based on the approved plans but

he felt that the alterations did not alter the character and identity as existed before 1948 which he described as merely assessorial alterations. He listed out in his report the various renovations and alterations. On the ground floor, there was a timber partition dividing the open space in the open hall into rooms. The timber staircase was constructed to a gentle slope. However, the wall and floor finishes with coloured tiles remained the same. There was also a bathroom facility constructed in the open space area and a new W.C. was constructed directly opposite the original place.

On the first floor, alterations were done to the rooms which were partitioned into a master bedroom, a dressing room and another room. Originally, it had only a large master bedroom and a small size room. The original passage way of 8 feet wide was increased to 11 feet wide. The space which was originally used for kitchen and open terrace with a parapet wall has now been walled up and completely covered by a lean-to roof. The original bathroom has been removed and relocated to the main wall of the building and the rest of the space has been converted into a kitchen space. The floor has been relaid and the wall enclosing the kitchen area has become an extension of the parapet to include new fixed glass panel windows. The floor finish is of mosaic tiles. According to P.W.3, there was no apparent change to the roof structure except changes to the roofing materials which he said were inevitable because of pre-war buildings.

It is clear to me from the evidence adduced that the alterations and renovations were carried out after 1948 as a result of World War II bombing. However, the bombing did not destroy the building completely. It merely affected the roof and back part of the premises. I also accept the evidence of P.W.3 who listed out the alterations, additions and renovations which were carried out. Applying for myself the test laid down in *Krishna Sreedhara Panicka's case i.e.* the degree of change affected by such alterations and renovations, in my judgment, they have not altered the physical condition of the building as existed before 1948. Whatever alterations carried out was merely to make the premises habitable after it was partly destroyed by the bombings. Although the defendants have not adduced any evidence of the actual repairs done, from the evidence of P.W.3, I am satisfied that the changes which had taken place in the premises were not of a substantial character to effect the general structure of the said premises.

For the above reasons, my answer to the question earlier posed is that the said premises is still a controlled premises within the meaning of the Control of Rent Act 1966.

As it is the plaintiff's case that he is a protected tenant under the Act he shall be entitled to costs of these proceedings. Counsel, however, agreed on the amount for "getting-up." The rest of the items will be taxed by the proper officer of the Court.

Order accordingly.

Solicitors: *Sharma & Co.; Shan & Gooi.*

ZULKIFLI BIN HASHIM v. ISMAIL BIN MOHAMED REJAB & ANOR.

[O.C.J. (Lim Beng Choon J.) July 7, 1986]

[Alor Setar – Kedah Civil Suit No. 41 of 1981]

Road Traffic – Negligence – Excessive speed along busy road – Defendant motorist should be more careful when passing by bus stop.

Tort – Negligence – Road accident – Liability – School boy knocked down by car while crossing road – Excess speed along busy road – Motorist 70% liable.

The plaintiff, an infant, brought this action by his father as next of friend, for damages for personal injuries sustained by him as a result of a road traffic accident. The plaintiff's version of the events is that on October 24, 1978 he attended the afternoon class at Syed Omar Secondary School, Alor Setar. After school, he intended to catch a bus at Jalan Darulaman. While crossing the road to catch the bus which was on the right side of the road, he was knocked down by the first defendant's car. The evidence of the first defendant is that he suddenly saw the plaintiff rushing out from a gap between 2 buses which were then parked at a bus-stop on the left side of the road. This bus-stop was almost directly facing the bus-stop on the right side of the road where the plaintiff had to catch his bus to take him home. The defendant further alleged that he was driving at that time about 20 m.p.h. and did apply his brake but could not avoid hitting the plaintiff.

Held: in the circumstances in this case the first defendant is very much more to blame for the accident than the plaintiff since he was driving at an excessive speed along a busy road and he should have kept a proper look-out and should not relax his observation for the consequences could well be disastrous. The need for him to be more careful applied particularly when he was passing a bus stop on his side of the road and there were many people embarking and